

ALCOHOLIC BEVERAGES DIVISION[185]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 123.21, the Alcoholic Beverages Division hereby amends Chapter 4, “Liquor Licenses—Beer Permits—Wine Permits,” Iowa Administrative Code.

This amendment adopts new rule 185—4.5(123), which establishes guidelines for liquor control license holders to mix, store, and dispense mixed drinks or cocktails which are not for immediate consumption on a licensed premises, subject to and mandated by 2012 Iowa Acts, House File 2465, section 22, and pursuant to rules adopted by the Alcoholic Beverages Division. This amendment is necessary to:

- Establish the requirements for mixing, storing, dispensing, and disposing of mixed drinks or cocktails that are not for immediate consumption,
- Establish labeling and reporting requirements,
- Establish that certain ingredients are prohibited, and
- Establish that a licensee who mixes, stores, and dispenses mixed drinks or cocktails that are not for immediate consumption shall comply with all applicable state and federal alcohol and food safety laws.

Pursuant to Iowa Code section 17A.4(3), the Alcoholic Beverages Division finds that notice and public participation are impracticable because of the immediate need for the amendment to implement the provisions of this law.

Pursuant to Iowa Code section 17A.5(2)“b”(1) to (3), the Alcoholic Beverages Division further finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective July 1, 2012, consistent with the effective date of the law. The law is not specific about the requirements for mixed drinks or cocktails which are not for immediate consumption, and it relies on the Division to establish guidelines. Moreover, storage requirements for mixed drinks or cocktails which are not for immediate consumption must be established to ensure the process is conducted in compliance with state and federal food safety laws to protect the health, safety, and welfare of the citizens of Iowa. For efficient regulation, administrative rules to implement consistent labeling of and record keeping on mixed drinks or cocktails which are not for immediate consumption are necessary.

This amendment is also published herein under Notice of Intended Action as **ARC 0205C** to allow for public comment.

This amendment does not provide for waivers in specified situations. An agencywide waiver provision is provided in 185—Chapter 19.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code chapter 123 and 2012 Iowa Acts, House File 2465, section 22.

This amendment became effective July 1, 2012.

The following amendment is adopted.

Adopt the following new rule 185—4.5(123):

185—4.5(123) Mixed drinks or cocktails not for immediate consumption. An on-premises liquor control licensee may mix, store, and allow the consumption of mixed drinks or cocktails which are not for immediate consumption, subject to the requirements and restrictions provided in 2012 Iowa Acts, House File 2465, section 22, and this rule.

4.5(1) Definitions.

a. Immediate consumption. For purposes of Iowa Code section 123.49(2)“d” as amended by 2012 Iowa Acts, House File 2465, section 22, and this rule, “immediate consumption” is defined as the compounding and fulfillment of a mixed drink or cocktail order upon receipt of the order for the mixed drink or cocktail.

b. Mixed drink or cocktail. A mixed drink or cocktail is a beverage composed in whole or in part of alcoholic liquors, combined with other alcoholic beverages or nonalcoholic beverages or ingredients including but not limited to ice, water, soft drinks, or flavorings.

4.5(2) Location. Mixed drinks or cocktails which are not for immediate consumption shall be mixed, stored, and consumed on the liquor control licensed premises. Mixed drinks or cocktails shall not be removed from the licensed premises.

4.5(3) Quantity. A mixed drink or cocktail which is not for immediate consumption shall be mixed and stored in, and dispensed from, a labeled container in a quantity not to exceed three gallons.

4.5(4) Container. A mixed drink or cocktail which is not for immediate consumption shall at all times be in a container compliant with applicable state and federal food safety statutes and regulations.

a. The mixed drink or cocktail shall be mixed and remain stored in the same container.

b. The mixed drink or cocktail shall be removed from the stored container for one of the following dispensing purposes:

(1) To compound and fulfill a mixed drink or cocktail order upon receipt of the order for the mixed drink or cocktail.

(2) For transfer into a pourable container. The pourable container shall have affixed a label compliant with subrule 4.5(5) displaying label information identical to that on the container from which the contents were poured. The expiration date and time shall not be extended by the transfer of product to a pourable container.

c. The mixed drink or cocktail may be strained into another container when each of the following conditions is met:

(1) The mixed drink or cocktail is returned without delay to the labeled container from which it was strained.

(2) The container and process are compliant with applicable state and federal food safety statutes and regulations.

d. An original package of alcoholic liquor as purchased from the division or an original package of wine shall not be used to mix, store, or dispense a mixed drink or cocktail, pursuant to Iowa Code section 123.49(2) “d” as amended by 2012 Iowa Acts, House File 2465, section 22, and section 123.49(2) “e.”

e. The mixed drink or cocktail shall not be mixed, stored, or dispensed from a container bearing an alcoholic beverage name brand.

4.5(5) Label. A label shall be placed on a container when the contents of the mixed drink or cocktail are placed into the empty container.

a. Contents are defined in subrule 4.5(6).

b. The label shall be subject to the following requirements and restrictions:

(1) The label shall adhere to the container for the duration of the 72 hours as set forth in 2012 Iowa Acts, House File 2465, section 22, and in subrule 4.5(7).

(2) The label shall be affixed to the container in a conspicuous place.

(3) The label shall legibly identify the month, day, and year the contents are placed into the empty container.

(4) The label shall legibly identify the time the contents were placed into the empty container. The time shall be reported to the minute utilizing the 12-hour clock, and include either the ante meridian (AM) or post meridian (PM) part of time.

(5) The label shall legibly identify the month, day, and year the contents expire.

(6) The label shall legibly identify the time the contents expire. The time shall be reported in the same manner as reported in subparagraph 4.5(5) “b”(4).

(7) The label shall legibly specify the title of the recipe used for the contents of the container.

(8) The label shall legibly identify the person who prepared the contents of the container.

(9) The label shall legibly identify the size of the batch within the container and be conspicuously marked with the words “CONTAINS ALCOHOL.”

(10) The label shall be removed from the container only after the entire contents have been consumed or destroyed and disposed of in accordance with applicable law.

(11) A removed label shall not be reapplied to a container.

(12) A new label, subject to the requirements and restrictions of paragraph 4.5(5) “b,” shall be affixed to a container that is being reused for a mixed drink or cocktail which is not for immediate consumption.

c. A licensee may access a label template on the Web site of the division located at www.IowaABD.com.

4.5(6) Contents. Contents include alcoholic beverages, nonalcoholic ingredients, or combination thereof, which are not for immediate consumption.

a. A licensee is limited to utilizing alcoholic beverages in the mixed drink or cocktail which are authorized by the license.

b. A licensee shall utilize alcoholic beverages in the mixed drink or cocktail which are obtained as prescribed by Iowa Code chapter 123.

c. The contents of the mixed drink or cocktail shall not include hallucinogenic substances, added caffeine or added stimulants including but not limited to guarana, ginseng, and taurine, or a controlled substance as defined in Iowa Code section 124.401.

4.5(7) Disposal.

a. Any mixed drink or cocktail, or portion thereof, not consumed within 72 hours of the contents being placed into the empty container shall be destroyed and disposed of in accordance with applicable law.

b. An expired mixed drink or cocktail which is not for immediate consumption shall not be:

(1) Added to an empty container and relabeled; or

(2) Added to another mixed drink or cocktail which is not for immediate consumption.

4.5(8) Records. A licensee shall maintain accurate and legible records for each prepared batch of mixed drinks or cocktails which is not for immediate consumption.

a. Records shall contain:

(1) The month, day, and year the contents are placed into the empty container.

(2) The time the contents are placed into the empty container. The time shall be reported in the same manner as reported in subparagraph 4.5(5) “b”(4).

(3) Each alcoholic beverage, including the brand and the amount, placed in the container. The amount of each alcoholic beverage shall be reported utilizing the metric system.

(4) Each nonalcoholic ingredient placed in the container.

(5) The recipe title and directions for preparing the contents of the container.

(6) The size of the batch.

(7) The identity of the person who prepared the contents of the container.

(8) The month, day, and year the contents of the container are destroyed and disposed of or entirely consumed.

(9) The time the contents of the container are destroyed and disposed of or entirely consumed. The time shall be reported in the same manner as reported in subparagraph 4.5(5) “b”(4).

(10) The method of destruction and disposal or shall specify the entire contents were consumed.

(11) The identity of the person who destroyed and disposed of the contents, if not consumed.

b. A licensee may access record-keeping forms on the Web site of the division located at www.IowaABD.com, by sending a request by fax to (515)281-7375, or by sending a request by mail to Alcoholic Beverages Division, 1918 SE Hulsizer Road, Ankeny, Iowa 50021.

c. Records shall be maintained on the licensed premises for a period of three years and open to inspection pursuant to Iowa Code section 123.30(1).

4.5(9) Dispensing machines.

a. *Machine without alcoholic beverages.* Nothing in this rule prohibits a licensee from operating a machine to premix and dispense frozen or iced mixed drinks or cocktails, provided that alcoholic beverages are added to the mixed drink or cocktail after being dispensed from the machine upon receipt of an order for the mixed drink or cocktail. The machine shall comply with all applicable state and federal food safety statutes and regulations.

b. *Machine with alcoholic beverages.* A dispensing machine which contains a mixed drink or cocktail with alcoholic beverages is subject to the requirements and restrictions of this rule.

4.5(10) *Food safety compliance.* A licensee who mixes, stores, and allows the consumption of mixed drinks or cocktails which are not for immediate consumption shall comply with all applicable state and federal food safety statutes and regulations.

4.5(11) *Federal alcohol compliance.* A licensee who mixes, stores, and allows the consumption of mixed drinks or cocktails which are not for immediate consumption shall comply with all applicable federal statutes and regulations. Prohibitions include but are not limited to processing with non-tax-paid alcoholic liquor, aging alcoholic liquor in barrels, heating alcoholic liquor, bottling alcoholic liquor, and refilling alcoholic liquor or wine bottles.

4.5(12) *Violations.* Failure to comply with the requirements and restrictions of this rule shall subject the licensee to the penalty provisions of Iowa Code section 123.39.

This rule is intended to implement Iowa Code subsection 123.49(2) as amended by 2012 Iowa Acts, House File 2465, section 22.

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